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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,618	09/30/2005	Eric Risgalla	WBL0002	5905
27268 7590 03/06/2009 BAKER & DANIELS LLP 300 NORTH MERIDIAN STREET SUITE 2700 INDIANAPOLIS, IN 46204				
EXAMINER				
PASCUA, JES F				
ART UNIT		PAPER NUMBER		
3782				
MAIL DATE		DELIVERY MODE		
03/06/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/551,618

Applicant(s)

RISGALLA, ERIC

Examiner

Jes F. Pascua

Art Unit

3782

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-18, 20 and 21 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

1. The amendment to the claims, filed 12/22/2008, fails to comply with 37 CFR1.121(c), which requires the listing and status of every claim; including cancelled claims.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 12-14, 16, 18, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,149,772 to Olsson.

Olsson discloses a flexible container for containing liquid comprising two overlaying walls bonded together along a peripheral seam (10), an inner sealed volume, a spout (the upper right corner) protruding outwardly beyond the inner sealed volume, an outflow channel (20), an obstacle (12) formed by bonding together the two walls in the inner sealed volume in the vicinity of the outflow channel thereby leaving open a restricted passage (18) between the inner sealed volume and the outflow channel. The position of the obstacle is relative to the spout and the peripheral seam such that a portion of the overlying walls including the spout and bounded by the obstacle and by a fold (30) directed substantially transversally with respect to the obstacle, deflects or

arches when liquid is present in the inner sealed volume. Fig. 5 of Olsson shows an embodiment of the flexible container wherein there are two obstacles (26, 28) spaced apart by a narrow passage. The narrow passage faces the outflow channel of the spout to the same degree the term "facing" has been defined. Moreover, the two obstacles define two narrow passages on two sides of the outflow channel to the degree applicant sets forth the metes and bounds of the outflow channel.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olsson.

Olsson discloses the claimed invention except for the walls of the container being made from two separate sheets of flexible material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use two separate sheets of flexible material to make the container of Olsson, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. Applicant's remarks, filed 12/22/2008, do not address the Examiner's statement that constructing a formerly integral structure in various elements involves only routine skill in the art. Therefore, the Examiner's statement that it would have been obvious to one having ordinary skill in the art at the time the invention was made to use

two separate sheets of flexible material to make the container of Olsson is taken to be admitted prior art.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olsson and French Patent No. 2 573 391 to Meattle.

Olsson discloses the claimed device except for the spout having a groove. Meattle discloses that it is known in the art to provide a groove on the spout of an analogous container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the spout of Olsson with the groove of Meattle, in order to facilitate tearing off a portion of the spout when the spout is in a sealed condition.

Allowable Subject Matter

7. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed 12/22/2008 have been fully considered but they are not persuasive.

Applicant remarks that the configuration of the flexible container disclosed in Olsson is such that the kink (30) does not lead to the deflection of a portion of the

overlying walls which includes the outlet (20) and which is bounded by the heat-sealed lines (12) and the kink (30). The kink occurs in the portion of the container not containing the outlet (20) (see FIG. 3 & 4 of Olsson). However, the claims recite the overlying walls including the spout (emphasis added) and bounded by the obstacle or the obstacles and by folds directed substantially transversely with respect to the obstacles. As discussed above, Olsson discloses a spout as the upper right corner of the flexible container. In Fig. 3 of Olsson, the upper right corner of the flexible container includes the portion of passage (18) located on the right side of the kink (30). This portion of passage (18) is bounded by the obstacle (12) and kink (30). Olsson discloses that the fold causes the walls of the passage (18), at the corner (32), to be firmly pressed together and to offer more resistance to fluid flow along the passage (18). See column 2 lines 44-48 and depicted in Fig. 4. Therefore, Olsson discloses a portion of the overlying walls including the spout (passage (18) in the upper right corner of the flexible container) and bounded by the obstacle (12) or the obstacles and by folds (30) directed substantially transversally with respect to said obstacles deflects or arches when liquid is present in the inner sealed volume (Fig. 4).

Regarding applicant's remark that Olsson does not meet claim 18, Olsson shows the obstacle (12) having an elongated shape extending between a left end and right end. The obstacle (12) overlaps the peripheral seam (10) in the vertical direction of the flexible container on the left side and the right side of the spout.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue

requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/

Primary Examiner, Art Unit 3782